



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Xerxe Group
File: B-259142
Date: February 9, 1995

DECISION

The Xerxe Group protests the award of a contract to Cray Research, Inc., under request for proposals (RFP) No. DACA31-94-R-0091, issued by the Army Corps of Engineers.

It is our policy not to decide protests where the matter involved is before a court of competent jurisdiction unless the court requests our decision. 4 C.F.R. § 21.9(a). Xerxe has filed a suit in the Court of Federal Claims in which it raises the issues included in its protest to our Office. Since the court has not requested a decision from our Office, we dismiss the protest.

The protest is, in any event, without merit. The sole protest ground is that the agency improperly found Cray's proposed price lower than Xerxe's because it failed to consider (1) the 10 percent price differential in favor of small disadvantaged businesses (SDB) such as Xerxe, and (2) the "potential [price] reductions" that Xerxe offered in "comments" in its proposal if the agency agreed to an alternative testing and delivery schedule and the government paid \$833,750 that Xerxe claims under a subcontract it holds with another firm. Because Xerxe did not commit to meet the delivery schedule required by the RFP, in either its actual proposal or the alternative schedule, the agency reasonably found the proposal unacceptable and was not required to consider the "comments" offering to reduce its price. The agency also properly declined to credit Xerxe for its claim, whose merit has not been established. The SDB preference is immaterial since, by itself, it would not bring Xerxe's price below that of Cray's.

The protest is dismissed.

A handwritten signature in cursive script, reading "Paul Lieberman".

Paul Lieberman
Assistant General Counsel